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Supreme Court of the United States

OCTOBER TERM 1946

No. 612

ADELAIDE H. KNIGHT and WILLIAM P. DOYLE, Common Stockholders of the Equitable Office Building Corporation, Debtor,
Petitioners,

v.

J. DONALD DUNCAN, as Trustee, *et. al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND MOTION FOR LEAVE TO FILE

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October 15, 1946.

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ADELAIDE H. KNIGHT and WILLIAM P. DOYLE, Common Stockholders of the Equitable Office Building Corporation, Debtor, *Petitioners,* *v.* J. DONALD DUNCAN, as Trustee, *et al.*, *Respondents.*	No. .....

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI

Now come T. ROLAND BERNER and M. VICTOR LEVENTRITT, counsel for the petitioners above-named, and respectfully move this Court for leave to file the petition for certiorari, hereto annexed, under Section 262 of the Judicial Code (28 U. S. C., Sec. 377), directed to the United States Circuit Court of Appeals for the Second Circuit, to review an order of that Court, entered July 18, 1946, more particularly described in the petition, and for such other and further relief as may be just and proper.

T. ROLAND BERNER,
M. VICTOR LEVENTRITT,
Counsel for Petitioners,
30 Broad Street,
New York 4, N. Y.

October 15, 1946.

Supreme Court of the United States

OCTOBER TERM, 1946

ADELAIDE H. KNIGHT and WILLIAM P. DOYLE, Common Stockholders of the Equitable Office Building Corporation, Debtor, Petitioners, *v.* J. DONALD DUNCAN, as Trustee, *et al.*, Respondents.	No. .....

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Your petitioners, Adelaide H. Knight and William P. Doyle, stockholders of the Equitable Office Building Corporation, Debtor, respectfully pray that a writ of certiorari issue under Section 240 and in the alternative Section 262 of the Judicial Code to review the order of the United States Circuit Court of Appeals for the Second Circuit entered on July 18, 1946, denying petitioners' application for a stay of consummation of the Plan of Reorganization of the debtor pending the determination of petitioners' appeal from an order of the United States District Court for the Southern District of New York entered on July 16, 1946, denying petitioners' applications for an order, (1) modifying and amending the said Plan, (2) fixing a time for the filing of the petitioners' proposed amendments to the Plan, and (3) staying all steps in furtherance of the consummation of the said Plan pending its modification and amendment.

A certified copy of the pertinent portions of the record in the instant proceedings including the proceedings in said Circuit Court of Appeals is furnished herewith in accordance with Rule 38, Paragraph 1 of the rules of this Court.

Opinions

The Circuit Court of Appeals rendered no opinion.

In granting a stay herein, Mr. Justice Reed rendered an opinion which is printed at pages 362-369 of the record.

Jurisdiction

The jurisdiction of this Court is invoked under Sections 2, 24 and 121 of the Bankruptcy Act (11 U. S. C. 11, 47, 521), and under Section 240 of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Section 347) and, in the alternative, Section 262 of the Judicial Code (28 U. S. C., Section 377).

Summary Statement of the Case and Question Presented

The matter herein involved arises in proceedings under Chapter X of the Bankruptcy Act. The petitioners' applications to the District Court differ from those of the Stockholders' Committee and the Debtor (which are being submitted simultaneously herewith) in seeking merely a modification of the Plan (herein called the "Knight Modification") pursuant to Section 222 of the Bankruptcy Act (11 U. S. C. 622). The treatment of all interested parties under the Plan and the Knight Modification, with the present and proposed capitalization of the debtor under the Plan before and after conversion and under the Knight Modification is discussed by Mr. Justice Reed in this case (R. 362) and is shown in the chart on the following page.

CHART SUMMARIZING PLAN AND KNIGHT MODIFICATION

Claim	*Treatment Under Plan*	*Treatment Under Knight Modification*
$15,880,543.55 First Mortgage Bonds	Undisturbed	Undisturbed
$3,000 Second Mortgage Bonds	Payment of Principal *without* interest	Payment of Principal *with* interest
$4,754,000 Debentures	$2,852,400 Income Bonds (convertible into 456,384 shares) plus 475,400 shares	Payment of $4,754,000 plus interest in full of approximately $1,154,700 (R. 162)
Stock 862,098 shares	86,209.8 shares	86,209.8 shares plus rights to subscribe to 862,098 shares (such rights having an indicated market value in excess of $6,000,000 as of July 12, 1946)

EQUITABLE OFFICE BUILDING CORPORATION

CAPITALIZATION

	Present	*Plan Before Conversion*[1]	*Plan After Conversion*[2]	*Knight Modification*[3]
First Mortgage due 5/1/74	$15,880,543.35	$15,880,543.35	$15,880,543.35	$15,880,543.35
6% Gold Mortgage Bonds 5/1/43 ...	3,000.00	—	—	—
35 year 5% S. F. Debentures 5/1/52..	4,754,000.00	—	—	—
5% Convertible Cumulative Income Bonds	—	2,852,400.00	—	—
Capital Stock—No Par Common	862,098 shares	561,609.8 shares	1,017,993.8 shares	1,017,993.8 shares

1. Under the Plan, the debenture holders would get $2,852,400.00 5% income bonds (convertible into 456,384 shares) plus 475,400 shares. The stockholders would get only 86,209.8 shares.
2. After conversion, the debenture holders would have 931,784.0 shares. (Conversion would take place because it permits debenture holders to get securities worth over $200 for each $100 bond.)
3. Under Knight Modification, the underwriter would get 69,686 shares and the stockholders would get 86,209.8 shares plus rights to subscribe to balance of 862,098 shares. (Such rights have indicated market value of over $6,000,000.)

The debenture holders, with the assistance of the Trustee, sought to avoid being paid off, hoping instead to make off with the Debtor's property by rushing through an immediate consummation of their plan (R. 113). The District Court on July 16, 1946, denied petitioners a hearing on the merits (R. 99), indicating by its remarks (R. 93) and memorandum opinion (R. 99) the erroneous view that to hear the proposals would be "to reopen the reorganization proceedings" which had in fact never been closed.

On July 18, 1946, the Circuit Court of Appeals, by endorsement of District Judges Coxe and Goddard but without the endorsement of Circuit Judge Learned Hand (who stated that he favored granting a stay), denied petitioners' application for a stay pending the hearing of their appeal.

Had it not been for an order of Mr. Justice Reed of this Court, entered August 6, 1946 (R. 360, opinion at R. 362) staying consummation, petitioners' appeal would be greatly prejudiced, if not mooted, prior to its determination by the Circuit Court or by this Court.

Reasons for Granting the Writ

Respondents have no legitimate interest in divesting the Debtor of all its assets and issuing to the public millions of dollars of new securities, while appeals are pending which would, on reversal, require the undoing of all these transactions, to the irreparable injury of the Debtor, its stockholders and the investing public. Their purpose is only to take advantage of the chaos they would create and to contend that the reorganization court has lost jurisdiction to remedy the error. To countenance such an attempt to defeat the ends of justice would be to condone a glaring abuse of the judicial process. The bankruptcy court has a clear duty to protect its jurisdiction by preserving the *status quo* until petitioners shall have had their day in court.

Conclusion

The failure of the Circuit Court of Appeals to grant a stay pending determination of the appeal was a clear abuse of discretion calling for the exercise of the supervisory powers of this Court. For this reason, certiorari should be granted.

Respectfully submitted,

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October 15, 1946.